



SENATE BILL 405: Amend Irrigation Contractors' Licensing Laws

2011-2012 General Assembly

Committee:	Senate Finance	Date:	May 17, 2011
Introduced by:	Sens. Hartsell, Brown	Prepared by:	Heather Fennell
Analysis of:	PCS to Second Edition S405-CSTD-35		Committee Counsel

SUMMARY: *Senate Bill 405 creates a process by which the North Carolina Irrigation Contractors' Licensing Board may issue a license to a nonresident individual or in the name of a domestic or foreign business entity. It requires the Board to suspend the license of a foreign entity that has a delinquent income tax debt, and allows the Board to suspend for 60 days the license of an individual who fails to obtain the required continuing education. The bill also modifies the fee structure by adding a \$250 reinstatement fee and allows the Board to assess the costs (including attorneys' fees) of a proceeding against an applicant or a licensee. The PCS corrects internal cross references in the bill.*

CURRENT LAW: Chapter 89C of the General Statutes provides for the licensing and regulation of irrigation contractors. It prohibits any person from engaging in the practice of irrigation construction or contracting, using the designation "irrigation contractor," or advertising using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the North Carolina Irrigation Contractors' Licensing Board ("Board").

The following persons or entities are exempt from the licensing requirements:

- Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- Any property owner who performs irrigation construction or contracting work on his or her own property.
- Any person performing irrigation construction or contracting work:
 - For temporary irrigation to establish vegetative cover for erosion control.
 - To control dust on commercial construction sites or mining operations.
 - For use in agricultural production, farming, or ranching, including land application of animal wastewater.
 - For use in commercial sod production.
 - For use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- Any person performing irrigation construction or contracting work for a golf course.
- Any person maintaining or repairing an irrigation system installed prior to January 1, 2009 and owned by the homeowners association of a planned community and located within the planned community's common elements.
- Irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than \$2,500.

The Board has the authority to examine and determine the qualifications and fitness of applicants for licensure and to take disciplinary action for violations of the law. In addition to taking any actions permitted under this act, the Board may assess a civil penalty not to exceed \$2,000 for each violation. The Board must establish a schedule of civil penalties for violations of this act and rules adopted by the

Senate PCS 405

Page 2

Board. The Board is also authorized to adopt and publish a code of professional conduct and practice for all licensees.

An applicant for licensure must meet all of the following qualifications:

- Must be at least 18 years of age.
- Must be of good moral character as determined by the Board.
- Must have at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting are equivalent to one year of experience.
- Must file and maintain with the Board a \$10,000 corporate surety bond or irrevocable letter of credit.
- Must pass an examination administered by the Board, which at a minimum must test the applicant's understanding of proper methods of irrigation construction and installation, efficiency of water use and conservation in the practice of irrigation construction and contracting, and basic business skills.

Annual license renewal is on or before December 31 of each year. As a condition of license renewal, each licensee must complete 10 continuing education units per year. Failure to obtain continuing education units will result in forfeiture of the license.

BILL ANALYSIS:

Section 1 adds a number of new definitions to G.S. 89G-1 related to domestic and foreign legal entities that are not individuals.

Section 2 clarifies that the licensure exemption for any federal, State or political subdivision performing irrigation construction or contracting on public property only applies if the work is done by employees of those entities. The bill also clarifies the exemption for general contractors and public utilities contractors licensed under Article 1 of Chapter 87.

Section 3 makes a conforming change to the powers and duties of the Board. The requirement that an applicant file a bond or letter of credit with the Board already exists in G.S. 89G-6(a).

Section 4 creates two new sections. **G.S. 89G-6.1** specifies the requirements for issuing a license in the name of a business entity that is a corporation, a limited liability company, a partnership or a business entity doing business under an assumed or trade name. Generally speaking, the Board may issue a license in the name of one of these business entities provided the business entity pays the license fee, has one or more licensed individuals associated with the entity and only those licensed individuals execute contracts for irrigation construction or irrigation contracting on behalf of the business entity. The individual licensee must directly supervise the contract and may not execute a contract on behalf of a business entity that is not licensed by the Board. The Board may issue a license to an individual who is not a resident of this State if the individual otherwise meets the licensing requirements of the Chapter, and that individual may qualify as the individual licensee required for a business entity to be licensed. Finally, the Board may issue a license in the name of a foreign corporation or foreign limited liability company provided the foreign entity is properly registered with the Secretary of State and otherwise meets the licensure qualifications for a domestic business entity. Similar provisions apply to licensing foreign partnerships. If the licensed individual ceases to be associated with the business entity, the business entity must notify the Board in writing and has 90 days from the date of notification to obtain another individual licensee. The Board must suspend the license of the business entity if it does not comply with these requirements.

Senate PCS 405

Page 3

G.S. 89G-6.2 requires the Board provide the Secretary of Revenue with information related to nonresident individuals and foreign entities licensed by the Board. If the Secretary notifies the Board that a nonresident individual or a foreign entity owes a delinquent income tax debt, the Board shall not renew that person's license unless the Secretary notifies the Board that the debt is paid or is being paid under an installment agreement.

Section 5 allows a 60-day grace period during which a licensed individual may obtain the required continuing education credits without forfeiture of the license.

Section 6 creates a \$250 reinstatement fee.

Section 7 allows the Board to assess the costs, including attorneys' fee, of a proceeding against an applicant or a licensee.

EFFECTIVE DATE: This act becomes effective October 1, 2011.

Kory Goldsmith, counsel to Senate Commerce, substantially contributed to this summary.

S405-SMTD-54(CSTD-35) v2